



## United States Department of the Interior

BUREAU OF RECLAMATION  
Upper Colorado Region  
Albuquerque Area Office  
555 Broadway NE, Suite 100  
Albuquerque, NM 87102-2352

IN REPLY REFER TO:

ALB-840  
ENV-6.00

NOV 14 2012

Ms. Katherine Miller  
County Manager  
County of Santa Fe  
102 Grant Avenue  
Santa Fe, NM 87501-2061

Subject: Memorandum of Understanding (MOU) to Participate as a Cooperating Agency for the Environmental Impact Statement (EIS) on the Pojoaque Basin Regional Water System (RWS), Action Item -- Return Signed MOU by December 14, 2012

Dear Ms. Miller:

The Bureau of Reclamation welcomes the County of Santa Fe as a cooperating agency in the preparation of an Environmental Impact Statement concerning the Pojoaque Basin RWS. The other agencies that have been invited as cooperating agencies include the Bureau of Indian Affairs, the Indian Health Service, the U.S. Army Corps of Engineers, the Fish and Wildlife Service, the New Mexico Office of the State Engineer, the New Mexico Department of Transportation, the City of Santa Fe, and the Pueblos of Nambé, Pojoaque, San Ildefonso, and Tesuque.

As a cooperating agency, the County of Santa Fe's involvement will include providing background information, assisting with alternatives development, identifying potential effects of the alternatives from the county's perspective, participating in key meetings, and reviewing the Draft and Final EIS.

Enclosed is an MOU which outlines the purpose of the EIS and the lead and cooperating agencies' responsibilities and authorities. This MOU is provided for your review and signature.

Please return the signed MOU by December 14, 2012, to:  
Bureau of Reclamation, Albuquerque Area Office  
Attn: ALB-840  
555 Broadway NE, Suite 100  
Albuquerque, NM 87102

Thank you for your participation in this important project. If you have any questions about the project or the MOU, please contact Ms. Terina Perez of my office at 505-462-3614 or [tlperez@usbr.gov](mailto:tlperez@usbr.gov) for additional information.

Sincerely,

Mike A. Hamman  
Area Manager

Enclosure

cc: See next page

cc: Mr. Danny Mayfield  
County Commissioner  
Santa Fe County  
dmayfield@santafecounty.org

Mr. Adam Leigland  
Director, Public Works Department  
Santa Fe County  
aleigland@santafecounty.org

Mr. Patricio Guerrerortiz, PE  
Director, Public Utilities Department  
Santa Fe County  
pguerrerortiz@santafecounty.org

Mr. Hvtce Miller  
Intergovernmental Coordinator  
hmiller@santafecounty.org

Mr. John Utton  
Attorney  
jwu@sheehansheehan.com  
(via electronic mail only w/encl to ea)

**Memorandum of Understanding between the Bureau of Reclamation and the County of Santa Fe as Cooperating Agency for the Pojoaque Basin Regional Water System Environmental Impact Statement**

**I. Introduction**

The Bureau of Reclamation is preparing an Environmental Impact Statement (EIS) to analyze the effects of constructing and operating the Pojoaque Basin Regional Water System (PBRWS) as defined and authorized by the Aamodt Litigation Settlement Act, Title VI of Public Law 111-291. The PBRWS will be built in Santa Fe County, New Mexico as part of the Aamodt Indian Water Rights Settlement implementation. These efforts are referred to as the Project.

Reclamation as lead agency, must assure the EIS complies with the National Environmental Policy Act (NEPA) and other applicable statutes, regulations, and Executive Orders.

Reclamation is the lead agency and the County of Santa Fe has agreed to serve as a cooperating agency under NEPA for full participation in the planning process for the Project.

**II. Purpose**

The PBRWS is intended to provide a clean reliable source of drinking water for both pueblo and non-pueblo residents of the Pojoaque basin. The PBRWS is also expected to decrease reliance on diminishing groundwater supplies which may have impaired water quality, provide a source of water for fire suppression, and provide for future growth in the area. A Regional Water Authority will be formed to operate and maintain the PBRWS.

The PBRWS will consist of surface water diversion and water treatment facilities at San Ildefonso Pueblo on the Rio Grande, transmission, storage, and distribution facilities, and conjunctive use wells (aquifer recharge/recovery well fields) that will supply up to 4,000 acre-feet of water annually to residents within the Pojoaque Basin.

The PBRWS is described in the Aamodt Litigation Settlement Act, which was signed into law on December 8, 2010 (Public Law 111-291, Title VI; 124 Stat. 3065). The Settlement Act provides for settlement of water rights claims in the Pojoaque Basin including claims of the Pueblos of Nambe, Pojoaque, San Ildefonso, and Tesuque, the City of Santa Fe, the County of Santa Fe, and non-Pueblo residents of the basin.

**III. Agency Designee**

Reclamation and the County of Santa Fe will each designate a representative and a backup to act as the point of contact for the EIS. An entity may change its point of contact at any time by providing written notice to the other party.

**IV. Authority**

The authority of the lead agency (Reclamation) to participate in this agreement is provided by the National Environmental Policy Act, 42 USC 4321 *et seq.*

**V. Lead Agency Responsibilities**

As lead agency, Reclamation will:

- a) Be responsible for the preparation of, quality of, and content of the EIS.

- b) Identify the County of Santa Fe in the EIS as a cooperating agency and summarize its roles and responsibilities as a cooperating agency.
- c) Be available to discuss with the County of Santa Fe any questions or issues related to EIS documents.
- d) Incorporate, as it deems useful and appropriate, the information provided by the County of Santa Fe into the appropriate EIS documents.
- e) Provide the County of Santa Fe with copies of the various EIS public reports as part of the public review process. These are expected to include a scoping report, newsletters, technical reports, and a draft and final EIS.
- f) Assure compliance with Federal environmental and other statutes including, but not limited to, NEPA, National Historic Preservation Act, Clean Water Act, and the Endangered Species Act.
- g) Be responsible for identifying 1) the purpose and need for the proposed action, 2) which alternatives are selected for evaluation, 3) scope of analysis, and 4) decisions to be made.
- h) Make the final decision on the content of all EIS documents
- i) Make the final decision to be documented in an appropriate decision document.

#### **VI. Cooperating Agency Responsibilities**

As a cooperating agency, the County of Santa Fe will:

- a) Participate in the NEPA process at the earliest possible time.
- b) Participate in the scoping process.
- c) Assume to the extent possible, as requested by the lead agency, responsibility for providing or developing data or information and preparing environmental analyses with respect to those areas where the County of Santa Fe has special expertise.
- d) Provide guidance and recommendations to the EIS Team in those areas where the County of Santa Fe has special expertise.
- e) Be available to discuss with the EIS team any documents or analyses provided by the County of Santa Fe.
- f) Fund its own expenses associated with its participation as a cooperating agency in the EIS process subject to legislative approval and budgetary obligations.

#### **VII. Other Provisions**

1. *Authorities not altered.* Nothing in this MOU alters, limits, or supersedes the authorities and responsibilities of any Party to this MOU on any matter within their respective jurisdictions. Nothing in this MOU shall require any such Party to perform beyond its respective authority.
2. *Financial obligations.* Nothing in this MOU shall require any of the Parties to this MOU to assume any obligation or expend any sum in excess of authorization and appropriations available.
3. *Immunity and defenses retained.* Each Party to this MOU retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this MOU.
4. *Conflict of Interest.* The Parties to this MOU agree not to utilize any individual for purposes of plan development, environmental analysis, or Cooperator representation,

including officials, employees, or third-party contractors, having a financial interest in the outcome of the Project.

5. *Documenting disagreement or inconsistency.* Where Reclamation and one or more Cooperators disagree on significant elements of the EA (such as designation of the alternatives to be analyzed or analysis of impacts), and these disagreements cannot be resolved, the Cooperator may document its views in the Draft EA and the Final EA. The same provision applies when there are inconsistencies between the Reclamation's proposed action(s) and the objectives of state, local, or tribal land use plans and policies.
6. *Management of information.* The County of Santa Fe acknowledges that all data and information provided will become part of the Reclamation's official record and will be available for public review, except as restricted by the Freedom of Information Act and/or the Privacy Act. The County of Santa Fe agrees that internal working draft documents for the development of the EA will not be made available for review by individuals or entities other than the Parties to this MOU. All draft documents are part of the official Reclamation record and may only be released by Reclamation to the extent allowed by the Freedom of Information Act or the Privacy Act. The Parties agree that in order to allow full and frank discussion of preliminary analysis and recommendations, all meetings to review such pre-decisional and deliberative documents will not be open to the public.
7. *Responsibility for decision making.* While the Parties to this MOU agree to make reasonable efforts to resolve procedural and substantive disagreement, they acknowledge that Reclamation retains final responsibility for the decisions identified in the EA and decision record.

### **VIII. Organizational Structure**

Reclamation's EIS Project Manager leads the EIS Team, is responsible for day-to-day project management and is supervised by the Manager of the Major Projects Division. The EIS Project Manager is supported in the areas of stakeholder and public participation by a specialist from the PBRWS EIS contractor.

### **IX. Resolution of Disputes**

The lead agency is responsible for all decisions involving the EIS and will make all final decisions on disputes arising during the NEPA process. The lead agency will document for the administrative record the nature of any dispute and resolution process used. A dispute will first attempt to be resolved at the level it arose.

For disputes involving different interpretations of information, the lead agency agrees to consider different interpretations if such interpretations are supported by sufficient credible data, as determined by the lead agency. For other disputes, the parties will use their best efforts to resolve issues in a collaborative and timely manner. If a disputed issue cannot be resolved in a collaborative and timely manner following the sequence outlined above, the lead agency will

make a final decision. The County of Santa Fe will retain the right to comment on all issues related to the EIS, including those in dispute, through the normal public review and comment process.

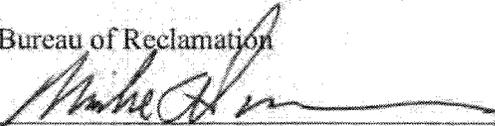
**X. Implementation, Amendment, and Termination**

This agreement will become effective on the date of the last signature, and may be subsequently amended through written agreement of all signatories. The lead agency or the cooperating agency may terminate this agreement by providing written notice of termination to the other party. If not terminated sooner, this agreement will end when the decision document is signed.

**XI. Signatures**

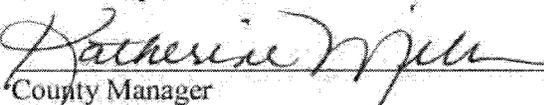
The parties hereto have executed this memorandum of agreement as of the dates shown below:

Bureau of Reclamation

  
\_\_\_\_\_  
Area Manager, Albuquerque Area Office

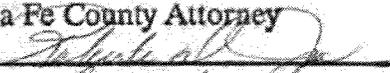
12-17-12  
Date

The County of Santa Fe

  
\_\_\_\_\_  
County Manager

12-6-12  
Date

Approved as to form  
Santa Fe County Attorney

By:   
Date: December 4, 2012  
